IN THE HON'BLE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR (C.G.)

3

W.P.NO. 518 /2006 Single Bench

PETITIONER : Shrimati Sharda Nagre (Nagre),aged 40 years,
D/o Mangal Singh Nagre,
A.N.M. Kongiyakala,
Block and Tahsil Saja,
District Durg C.G.)

P.S. No. 504/06
Presented by Shri S.K. Verma
dated 30/1/06

VERSUS

RESPONDENTS : (1) The State Govt. of Chhattisgarh,
Through – The Secretary,
Health and Family Welfare Department Ministry,
D.K.S. Bhavan, Raipur (C.G.)

(2) Chief Chikitsa and Health Officer,
Durg.

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR THE ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS CERTIORARI, PROHIBITION AND FOR OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

The petitioner respectfully furnishes the particulars of the writ petition as under:-

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर.

आदेश पत्रक

मामला क्रमांक W.P. No. 518/2006 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2-2-2006 Shri Surya Kant Mishra, counsel for the petitioner. Shri Sandeep Dubey. Govt. Advocate for the State. Heard. 2. The petitioner has filed the present petition challenging the order of transfer dated 14-11-2005 whereby the petitioner has been transferred from Durg to Korea on the ground that it is contrary to transfer policy. 3. Learned counsel for the State opposes the petition and submits that the transfer has been made in exigency of service. 4. The Apex Court in the case of *Gujrat Electricity Board vs Atmaram Sungomal Poshani* reported in *(1989) 2 SCC 602* held that transfer is an incident of service and employee has no right to be posted at a particular place. The Apex Court further in the case *Mrs. Shilpi Bose vs. State of Bihar* reported in *AIR 1991 SC 532* has held that the Courts should not interfere with transfer orders when are made in public interest or on administrative grounds unless they are made in violation of mandatory statutory rules or on the ground of mala fide and that even where executive instructions are violated, the Court ordinarily shall not interfere and the concerned transferee employee should approach the higher-ups in the department for the relief. In the same decision, it is also held	

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that even where the transfer is effected on request of employees to avoid hardship, the same should not be interfered with by the Courts.

5. In the case of *Union of India vs. S.L. Abbas* reported in *(1993) 4 SCC 357* the Apex Court has held that no employee has any vested right to seek transfer to a place of his choice. Furthermore, in *State of Madhya Pradesh vs. S.S. Kourav* reported in *(1995) 3 SCC 270* the Apex Court held that the Court cannot decide relative hardship; it is for the administration to appreciate on a representation that may be made by the concerned employee and that hardship caused to an employee from transfer is not and cannot be a ground for judicial review of the transfer order. To the same effect is the decision of the Apex Court in *Union of India vs. H.N. Kirtania* reported in *(1989) 3 SCC 445*. In *Abani Kanta Ray vs. State of Orissa* reported in *1995 Suppl.(4) SCC 169* , the Apex Court opined that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

6. This Court while deciding Writ Petition No.2007/2004 (Ferro Scrap Nigam Limited vs. B.P. Sharma and others) on 6/1/2005 has dealt with the matter of transfer. In para 21 of the said order, it was held as under:

> *"21. Having considered the rival contention of the learned counsel for the parties, in the opinion of this Court, the transfer is an exigency of service.*

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It is well settled that no government servant or employee of public undertaking has any legal right to be posted forever at any one particular place as it is not only an incident but a condition of service. The contention of learned counsel for respondent that he cannot be transferred is not correct. That part of the order of the learned Industrial Court is not sustainable. The finding of the Industrial Court that respondent no.1 cannot be transferred is against the canon of service jurisprudence."

7. This Court has also recently considered the aforesaid issue regarding transfer of an employee in W.P.No.4960/2005 (*N.D. Atulkar vs. State of Chhattisgarh & Others*) and has held that it is well settled by a catena of decisions of the Apex Court and High Courts that transfer of a Government or public servant who is appointed to a cadre of transferable post from one place to another, is an ordinary incident of service and, therefore, does not result in any alteration of conditions of service to his disadvantage and therefore, transfer cannot be said to be punitive in nature. Transfer is an incident of service and an employee has no right to be posted at a particular place. An employee holding a transferable post has no legal right to insist for his posting at a particular place of his choice. Transfer of public servant made on administrative grounds of public interest should not be interfered with by the Courts unless there is strong and pressing grounds rendering the transfer order illegal on the ground of violation of mandatory statutory rules or on the ground of mala fide or on the ground of lack of authority. The Courts or the Tribunals cannot sit as appellate

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	Court on the orders of the transfers made on administrative grounds. The reason for this self-imposed restraint is that the wheels of administration should be allowed to run smoothly and the Courts or the Tribunals are not expected to interdict the administrative system. 8. In view of the law laid down by the Apex Court and also by this Court in the aforesaid cases and further the fact that the transfer is an exigency of service, not a case for setting aside the transfer order while exercising the extraordinary jurisdiction under Article 226/227 of the Constitution of India. However, the petitioner may make the representation before the competent authority, which shall be considered and decided on its own merits in accordance with law. 9. Accordingly, the petition stands disposed of. Sd/- Fakhruddin Judge P/-	

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